IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO.1368 OF 2005

Madhav Kashinath Sonawane & Ors. ..Appellants.
Vs.
Sau. Rakhamabai Tanhaji Aher ..Respondent.
...
Mr. R.M. Haridas for the Appellants.

CORAM : DR.D.Y.CHANDRACHUD, J.

18th November, 2005.

P.C. :

The Second Appeal does not, in my view, raise any substantial question of law. The suit for partition was decreed by the Trial Court. The Appeal filed by the Appellants herein was partly allowed. The claim for partition in respect of house properties was dismissed in view of the provisions of Section 23 of the Hindu Succession Act. On behalf of the Appellants, it has been submitted that the Trial Court did not have territorial jurisdiction. Section 21(1) of the Code of Civil Procedure provides that no objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection is taken in the Court of first instance at the earliest possible opportunity and in all

cases where issued are settled, at or before such settlement, and unless there has been a consequent failure of justice. The First Appellate Court has noted that even at the stage when additional issues were framed, the Appellant did not request the Trial Court to frame any issue on jurisdiction; the Appellant proceeded with the trial and was held to have waived his objection to the place of suing. There is no infirmity in the approach of the First Appellate Court. The concurrent finding is that the properties were joint family properties and therefore liable to be partitioned. In these circumstances, there is no merit in the Second Appeal which is accordingly dismissed.